

## **Rye City Planning Commission Minutes**

December 10, 2002

### **PRESENT:**

Michael W. Klemens, Chairman  
Peter Larr, Vice-Chairman  
Franklin Chu  
Hugh Greechan  
Martha Monserrate  
Barbara Cummings

### **ABSENT:**

None

### **ALSO PRESENT:**

Christian K. Miller, AICP, City Planner  
James McGee, CC/AC

Chairman Klemens called the regular meeting to order in the Council Chambers of the City Hall and noted that a quorum was present to conduct official business.

## **I. HEARINGS**

### **1. Barber (Phillips Lane)**

**ACTION:** At the request of the applicant, the Commission continued the public hearing on Wetland Permit (WP108) until it's January 14, 2003 meeting.

## **II. ITEMS PENDING ACTION**

### **1. Ann Lane Subdivision**

The Commission reviewed and discussed a letter from Ellis Court residents expressing concern regarding the impact of the proposed subdivision. The letter included concerns regarding drainage impacts and steep slope disturbances and other engineering considerations, which were addressed in a memorandum to the Commission from the City Engineer. The Commission noted that to address those concerns a restricted area was to be imposed along the western property line to prevent disturbance of the steep slope area. The Commission questioned the width of that area and noted that a meets and bounds description would be required prior to any final approval. Linda Whitehead (applicant's attorney) responded that the restricted area was generally 40 feet in width but

## **Rye City Planning Commission Minutes (Cont.)**

December 10, 2002

Page 2 of 13

1 that a portion of that area included a wall, which was approximately 30 feet from the  
2 western property line.

3  
4 Ms. Whitehead indicated that she contacted the Rye Historical Society as requested by  
5 the Commission regarding the opportunity to review the property to see if there were any  
6 contents of the current carriage house that they might be interested in. Ms. Whitehead  
7 stated that Historical Society requested that photographs of the existing facility be taken  
8 before it is demolished.

9  
10 The Commission questioned whether the size of the proposed 4-lot subdivision should be  
11 reduced to two lots to address potential adverse impacts including minimizing slope  
12 disturbance along the western property line. Ms. Whitehead responded that the proposed  
13 4-lot subdivision was consistent with the existing character of the surrounding area and that  
14 a 2-lot subdivision would result in a lot sizes nearly double of those of their neighbors and  
15 permit the applicant to build homes that were very large relative to the existing homes in the  
16 area.

17  
18 Ms. Whitehead also noted that concerns regarding erosion control, drainage and steep  
19 slope disturbance had been addressed in the modification to the subdivision. Ms.  
20 Whitehead stated that the plans had been modified so that there would be only modest  
21 disturbances to steep slope areas. To illustrate that point, Ms. Whitehead provided a cross  
22 section of the proposed homes on the subdivision and their relationship to the properties  
23 on Ellis Court. Ms. Whitehead noted that there would be nearly 70 feet of horizontal  
24 separation between the proposed homes on the applicant's property and the existing  
25 structures on the Ellis Court properties. She indicated the extent of slope disturbance was  
26 modest.

27  
28 The commission discussed a potential two-lot subdivision. Some members noted that two  
29 large homes as permitted under the City's floor area ratio limitations would be inconsistent  
30 with the character of the neighborhood. Other members noted that if there is a need for big  
31 houses in the City, that need could be achieved on these lots and that they would be  
32 provided with reasonable sized yards for the residential use.

33  
34 Ms. Whitehead responded that a two-lot subdivision would not afford the City some of the  
35 improvements proposed by the applicant including the installation of a new drainage  
36 system in Ann Lane. Chuck Utschig (applicant's engineer) noted that the yards associated  
37 with each home were relatively level and would accommodate the needs of the  
38 residences. He noted that the steep slope disturbance would be minimized by the  
39 construction of a tiered wall system and that only 10% of the steep slope area on the  
40 property would be disturbed. Mr. Utschig noted that the proposed grading on the property  
41 would not exceed a 3:1 ratio. He indicated that the plan does not present erosion control

## Rye City Planning Commission Minutes (Cont.)

December 10, 2002

Page 3 of 13

1 problems for drainage concerns. Mr. Utschig noted that drainage to downhill residents on  
2 Ellis Court would improve with the proposed subdivision given the proposed drainage  
3 system and the diversion of storm water towards Forest Avenue.  
4

5 The Commission agreed that a four lot subdivision would be appropriate, but that further  
6 mitigation measures would be necessary to minimize the steep slope disturbance. The  
7 Commission amended the plan to expand the restricted area to more closely follow the top  
8 of the steep slope area. The Commission requested that a wall be constructed along the  
9 top of the slope to delineate in the field the edge of the restricted area. The extent of the  
10 restricted area was annotated on a plan and signed by the Chairman. The Commission  
11 noted that this annotated plan be returned to the public record after it is used by the  
12 applicant to modify the subdivision.  
13

14 The commission discussed the restrictions within the restricted area and noted that it  
15 should be an area that's left in its natural state and that no yard waste, landscaping,  
16 including lawn, be permitted in this area.  
17

18 The Commission discussed the proposed relocation of the sewer line for the adjacent  
19 synagogue, which currently extends on the applicant's property. Chuck Utschig indicated  
20 that the applicant has discussed the relocation of the sewer line with the synagogue and  
21 will likely relocate the line along the applicant's southern property line but on the adjacent  
22 synagogue property. The Commission discussed the construction of the extension of Ann  
23 Lane and noted that the applicant will be required to restore and extend adjacent driveways  
24 to match their current condition. Mr. Utschig agreed to such conditions. The Commission  
25 reviewed and discussed the application's consistency and applicability to the City's Local  
26 Waterfront Revitalization Program (LWRP). The Commission noted that the proposed  
27 subdivision was not located within direct proximity of the waterfront area and therefore  
28 many of the City's LWRP policies were not applicable.  
29

30 On a motion made by Michael Klemens, seconded by Peter Larr and carried by the  
31 following vote:  
32

33 AYES: Michael Klemens, Peter Larr, Franklin Chu, Barbara Cummings, Hugh  
34 Greechan, Martha Monserrate

35 NAYS: None

36 RECUSED: None

37 ABSENT: None  
38

39 the Planning Commission took the following action:  
40

## Rye City Planning Commission Minutes (Cont.)

December 10, 2002

Page 4 of 13

1   **ACTION:**     The Commission determined that the proposed subdivision would not have  
2                   any significant adverse environmental impacts and adopted a SEQRA  
3                   negative declaration, determined that the application was consistent with the  
4                   policies of the City's LWRP and granted preliminary subdivision approval.  
5

### 6    **2.     Walker Subdivision**

7

8    The Commission reviewed the applicant's 3-lot subdivision alternative, which includes a  
9    driveway extending from Forest Avenue and no wetland buffer disturbance. The  
10   Commission questioned the applicant as to which was it's preferred subdivision  
11   alternative.<sup>1</sup> Linda Whitehead (applicant's attorney) responded that the applicant was  
12   willing to move forward with either plan and that they were providing the alternative plan as  
13   requested by the Commission for its consideration.  
14

15   The Commission responded that it did not request a 3-lot subdivision but rather an  
16   alternative driveway access configuration from Forest Avenue to avoid wetland buffer  
17   impacts. The Commission suggested that the new application including 3 lots was  
18   somewhat spiteful. Ms. Whitehead responded that the 3 lots complied with zoning and that  
19   the applicant's intent was not to be spiteful. The revised plan recognizes that a driveway  
20   extension from Forest Avenue would have an adverse economic impact on the value of the  
21   existing home. Ms. Whitehead noted that to re-coup that lost value the creation of an  
22   additional building lot was necessary.  
23

24   The Commission noted that the proposed driveway configuration along the southern  
25   property line would affect the rear yards of properties that front on the adjacent Rockridge  
26   Road. The Commission noted that the driveway alignment would also appear to require  
27   the removal of significant trees. The Commission questioned why the driveway could not  
28   be relocated along the northern property line and that the existing curb cut on Forest  
29   Avenue be used. Beth Evans (applicant's environmental consultant) explained that the  
30   driveway on the south side was designed to avoid tree loss to the maximum extent  
31   practical and that such an alignment afforded the greatest possible setback from the  
32   existing residence on the property.  
33

34   The Commission revisited the requirements of the wetland law noting that it requires the  
35   Planning Commission to evaluate viable alternatives to avoid any proposed wetland or  
36   wetland buffer disturbance. The City Planner noted that given the availability of access  
37   from Forest Avenue that a viable alternative appeared available but that there is some  
38   flexibility in the statute to not select such alternatives if they present other concerns, such as  
39   a public safety impact. In order to completely evaluate all viable driveway access

---

<sup>1</sup> The applicant's original subdivision included 2 lots with a driveway extending from Manursing Way. That application involved wetland buffer disturbance and the issuance of a wetland permit.

## Rye City Planning Commission Minutes (Cont.)

December 10, 2002

Page 5 of 13

1 alternatives, the Commission requested that the applicant prepare a new alternative plan  
2 with driveway access extending from the existing curb cut on Forest and extending along  
3 the northern property line. The Commission noted this driveway alignment appeared to  
4 result in less steep slope disturbance and tree loss. Ms. Whitehead responded that a  
5 driveway along northern property line would be very close to the existing residence and  
6 shave a significant impact on the use and value of that residence. The Commission  
7 requested that the alternative be provided so that its impact could be evaluated.

8  
9 The Commission requested that the existing lawn area within the 100-foot wetland buffer  
10 on Lot 3 be restored and consist of wetland plantings. Ms. Evans suggested that such  
11 wetland plantings were not required since no disturbance is proposed in the wetland buffer  
12 area. The City Planner noted that the current plan would not require a wetland permit, but  
13 that the restoration proposed by the Commission would likely require such a permit.

### 14 15 **3. Presentation by Westchester County**

16  
17 Rob Doscher (Westchester County Environmental Planner) provided an overview of the  
18 application noting that it involved the restoration of a tidal wetland at the Rye City Golf Club.  
19 He noted that funding for the Westchester County project was from a \$140,000 EPA grant.  
20 The project location was based on the recommendations of the watershed plan prepared  
21 by the Long Island Sound Watershed Advisory Committee (WAC III).

22  
23 Mr. Doscher noted that the Sven Hoger assisted with the preparation of the plan and that  
24 the intent of the plan is to prevent the continued encroachment of *Phragmites* into the tidal  
25 wetland. He noted that the *Phragmites* growth was in part facilitated by nitrogen in the  
26 stormwater runoff from the adjacent golf course.

27  
28 The Commission questioned the benefit of the project noting that it was its understanding  
29 that *Phragmites* provide many environmental benefits. Mr. Doscher responded that  
30 *Phragmites* do provide some benefits, but the Eurasian variety as is suspected to be at  
31 the project site are an aggressive strain that become invasive and overwhelm the existing  
32 ecology of the area. He noted that a more diverse wetland is generally preferred.

33  
34 The Commission questioned function of the proposed drainage channel. Mr. Doscher  
35 responded that the channel was intended to intercept runoff from the adjacent golf course  
36 and help slow *Phragmites* growth.

37  
38 The Commission noted the presence of the king rail within the project area, which is a New  
39 York State designated threatened species, and that the County's documentation does not  
40 appear to recognize the presence of this bird. Mr. Doscher indicated that the County  
41 recognizes the presence of the bird in the project area as well as other wildlife. Mr.

## Rye City Planning Commission Minutes (Cont.)

December 10, 2002

Page 6 of 13

1 Doscher noted that to address potential impacts to wildlife NYSDEC will require  
2 construction to be completed before March 31 to avoid the breeding season. He also  
3 noted that the County has been working with birders to address similar concerns.  
4

5 The Commission noted that it was very concerned regarding the potential legal exposure to  
6 the City in the event a threatened species were impacted, particularly since the project will  
7 occur on City property. The Commission agreed that the Chairman, Vice-Chairman and  
8 City Planner met with Corporation Counsel to discuss the City's legal liability and to clarify  
9 what permits or approvals are required by the City. The Commission also requested that  
10 the County provide this City with appropriate documentation from NYSDEC and the Natural  
11 Heritage Program recognizing the presence of threatened species in the project area.  
12

13 The City Planner advised that the Commission set a public hearing for the Commission  
14 next meeting in January in the event Corporation Counsel determines that approvals are  
15 required by the City.  
16

17 On a motion made by Barbara Cummings, seconded by Peter Larr and carried by the  
18 following vote:  
19

20 AYES: Michael Klemens, Peter Larr, Franklin Chu, Barbara Cummings, Hugh  
21 Greechan, Martha Monserrate

22 NAYS: None

23 RECUSED: None

24 ABSENT: None  
25

26 the Planning Commission took the following action:  
27

28 **ACTION:** The Planning Commission set a public hearing on Tidal Wetland Project  
29 WP#120 for January 14, 2003 meeting.  
30  
31

### 32 4. JDS Properties Site Plan 33

34 Brad De Motte (applicant's architect) provided an overview of the application noting that it  
35 involves a request for site plan approval to convert an existing three-family dwelling to a  
36 mixed-use development consisting of one apartment and the remainder of the building  
37 used for professional office. Mr. De Motte explained that the application requires a lot area  
38 variance due to the proposed mix of uses in one building. He also noted that the applicant  
39 is also seeking from the Rye City Zoning Board of Appeals (ZBA) an on-site parking  
40 reduction pursuant to Section 197-29.A of the Rye City Zoning Code.  
41

## Rye City Planning Commission Minutes (Cont.)

December 10, 2002

Page 7 of 13

1 Joe Samberg, property owner, explained that one of the employees would live in the  
2 existing apartment on the bottom/basement floor. He noted that the four proposed parking  
3 spaces would meet his needs and that of his partner, which is technically a separate  
4 professional office.

5  
6 The Commission noted that the application proposes the elimination of the continuous  
7 curb-cut and parking in the front yard along Boston Post Road, which is both a public safety  
8 and aesthetic enhancement over the existing condition. The Commission noted that it  
9 would support the applicant's proposed ZBA petition subject to the following conditions:

- 10  
11 • The use of the building should be limited to one apartment on the bottom  
12 floor/basement and no more than two professional office tenants. Medical offices  
13 shall not be considered professional office and no professional use can be  
14 expanded to the bottom floor/basement in lieu of the existing apartment unit.  
15  
16 • There shall be no more than four (4) employees (including both full-time and part-  
17 time employees) at the property at any given time.  
18  
19 • The site frontage shall be modified to eliminate the parking and continuous curb-  
20 cut along Boston Post Road. The only curb-cut shall be that which serves as the  
21 existing driveway to the rear of the property.

22  
23 Mr. De Motte and the property owner, Joe Samberg, agreed to the conditions.  
24  
25

### 26 5. Restaurant Zemak L.L.C

27  
28 Ramse Zakka (applicant) provided an overview of the project noting that it involved the  
29 conversion of a vacant retail space (formerly June & Ho) to a full service restaurant. He  
30 noted that refuse would be enclosed within the rear of the building.

31  
32 The Commission asked the applicant to better define and separate the patron area from  
33 the kitchen area. The Commission noted that the extent of patron area impacts the  
34 calculation of required parking. The applicant noted that the floor plan would be revised to  
35 address the Commission's concern.

36  
37 On a motion made by Barbara Cummings, seconded by Franklin Chu and carried by the  
38 following vote:

39  
40 AYES: Michael Klemens, Peter Larr, Franklin Chu, Barbara Cummings, Hugh  
41 Greechan, Martha Monserrate

## **Rye City Planning Commission Minutes (Cont.)**

December 10, 2002

Page 8 of 13

1 NAYS: None

2 RECUSED: None

3 ABSENT: None

4  
5 the Planning Commission took the following action:

6  
7 **ACTION:** The Planning Commission set a public hearing on Final Site Plan SP#267  
8 for next Meeting on January 14, 2003.

### 9 10 **6. 95 Wappanocca**

11  
12 Beth Evans (applicant's architect) provided an overview of the project, which consists of  
13 the construction of an addition to a single-family home. Ms. Evans noted that a wetland  
14 planting area consisting of wetland plants would be provided in place of existing lawn at a  
15 ratio of 2:1 to increase impervious area within the 100-foot wetland buffer.

16  
17 The Commission noted no concerns with the proposed project.

18  
19 On a motion made by Franklin Chu, seconded by Barbara Cummings and carried by the  
20 following vote:

21  
22 AYES: Michael Klemens, Peter Larr, Franklin Chu, Barbara Cummings, Hugh  
23 Greechan, Martha Monserrate

24 NAYS: None

25 RECUSED: None

26 ABSENT: None

27  
28 the Planning Commission took the following action:

29  
30 **ACTION:** The Planning Commission set a public hearing for its next meeting on  
31 January 14, 2003 for Wetland Permit Application number WP#121.

### 32 33 34 **7. Rockridge Christmas Tree Sales**

35  
36 The Commission reviewed the applicant's application form.

37  
38 On a motion made by Barbara Cummings, seconded by Martha Monserrate and carried by  
39 the following vote:



## **Rye City Planning Commission Minutes (Cont.)**

December 10, 2002

Page 9 of 13

1 AYES: Michael Klemens, Peter Larr, Franklin Chu, Barbara Cummings, Hugh  
2 Greechan, Martha Monserrate

3 NAYS: None

4 RECUSED: None

5 ABSENT: None

6  
7 the Planning Commission took the following action:

8  
9 **ACTION:** The Planning Commission approved application for Special Use Permit for  
10 the temporary sales of Christmas trees.

### 11 12 **9. Minutes**

13  
14 The Planning Commission reviewed and approved the minutes of its November 12, 2002  
15 meeting.

16  
17 There being no further business the Commission unanimously adopted a motion to adjourn  
18 the meeting at approximately 11:15 p.m.

19  
20 Christian K. Miller, AICP  
21 City Planner